

**From:** Jeff Fabijanic  
**To:** Microsoft ATR  
**Date:** 1/28/02 3:55pm  
**Subject:** Microsoft Settlement.

To whom it may concern:

I am writing you today to express my concern and opposition to the Proposed Final Judgement in the United States v. Microsoft antitrust case. I believe this settlement is counter to the best interests of the American people, harmful to our economy, and clearly inadequate given the findings of fact in the trial.

As a professional computer user and technology developer for the past 15 years (over twenty five if you consider my student years in high school and then MIT), I have watched as Microsoft has used any number of unethical and anti-competitive strategies to attain and maintain dominance at the expense of other companies, competing software platforms and consumers such as myself. In this respect, I am satisfied with the findings of fact in the case, as they confirm this viewpoint.

However, as upset as I am with Microsoft's past behaviours, I am extremely concerned that these same types of behavior are prevented in the future. Given the findings of fact, any judgement should demand strict measures which address not only the practices the company has engaged in previously, but which should also prevent them from engaging in other monopolistic practices in the future.

I do not think that the Proposed Judgement is strong enough to serve this function.

As I read the Proposed Judgement, many - perhaps most - of the remedies will be ineffective against a company such as Microsoft which is determined to circumvent them. That Microsoft will work to bypass the original intent of the Judgement is clear for both technical and business practices - even during the course of the trial and settlement negotiations it has continued to use tactics that should be blocked by a solid agreement.

In fact just this month Bill Gates declared "security" to be the future direction of Microsoft's focus. Of course, under the Proposed Judgement anything related to security need not be disclosed even if such would otherwise be mandatory. Under a strict reading, if Microsoft adds even basic security interfaces to its APIs then \*none\* of those APIs would need to be disclosed and there would be no penalty for not disclosing them.

And to add insult to injury, the settlement as written actually seems to codify some of Microsoft's predatory practices. For example, although the settlement forces Microsoft to share its APIs with certain competitors, it also would force those who use these APIs to share all their finished code

with Microsoft. As a result, Microsoft would see these companies' code trade secrets and have the opportunity to replicate or circumvent them.

Another example - a requirement for receiving documentation for those APIs is that any organization needing it must meet \*Microsoft-developed\* standards of business viability; "non-businesses" (eg small or non-profit companies, and individual developers) probably won't qualify and so access to those APIs will simply not be available to them. Similarly, the clause requiring that Microsoft's competitors be allowed to place their own icons on the PC desktops only applies to companies which have already sold more than a million copies of their software in the U.S. So the very companies who most need a competitive advantage can not, in this case, receive it.

There are numerous other problems or oversights in the Proposed Judgement. However, for the sake of brevity, I will limit my comments to this last statement - I feel that the Proposed Final Judgement is deeply flawed and needs to be substantially revised to remove these flaws. Microsoft deserves more than a wrist-slap for the destructive abuse of its monopoly power, and all of us, including Microsoft and its investors, need to be protected against future abuses.

Sincerely Yours,

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